

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KAMRAN TAVAKOLI-NOURI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
CENTRAL INTELLIGENCE AGENCY,	:	No. 99-3470
	:	
Defendant.	:	

JOYNER, J.

SEPTEMBER , 2000

MEMORANDUM

This is a freedom of information case brought by Plaintiff Kamran Tavokoli-Nouri ("Plaintiff") against the Central Intelligence Agency ("the CIA" or "Defendant"). In his Complaint, Plaintiff alleges that Defendant has failed to comply adequately with his lawful requests for information in violation of the Freedom of Information Act, 5 U.S.C. § 552 (1996) ("FOIA") and the Privacy Act, 5 U.S.C. § 552a (1996) ("the Privacy Act"). Presently before the Court are the parties' cross motions for summary judgment. For the reasons below, we will grant Defendant's Motion and deny Plaintiff's Motion.

BACKGROUND

Taken in the light most favorable to Plaintiff, the facts are as follows.

On July 8, 1993, Plaintiff wrote to the CIA to request copies of all documents pertaining to himself pursuant to FOIA and the Privacy Act. This was not his first such request. Indeed, Plaintiff had initiated several requests for information from, and had brought a number of unsuccessful lawsuits against, the CIA over the past decade. Although his prior requests for

information were responded to, Plaintiff continued to be dissatisfied with the results. All of Plaintiff's repeated requests and legal actions -- including the one at bar -- appear to stem from his ardent belief that various government officials are conspiring against him and plotting his demise.

After receiving no response to his July 8, 1993 letter, Plaintiff wrote to the CIA again on September 1, 1993, repeating his request and invoking the appeal provisions of FOIA and the Privacy Act. The CIA responded to Plaintiff's queries on September 30, 1993 by letter, indicating that it would undertake a search for documents relevant to Plaintiff. Over the next three years, the parties corresponded back and forth in writing and by phone, but no documents were produced pursuant to Plaintiff's request. Throughout the correspondence, Plaintiff continued to repeat his same requests or, alternatively, appealed the CIA's failure to respond to his earlier requests. For its part, the CIA continued to inform Plaintiff that it was processing his search in due course and urged his patience.

Still having received no substantive response to his latest requests, Plaintiff filed this action on June 22, 1999. Shortly after, on June 25, 1999, the CIA sent Plaintiff the results of its search. In its letter, the CIA informed Plaintiff that 127 documents had been found. Of that number, the CIA released 81 documents in full, released 18 documents with redactions, and withheld 28 documents pursuant to various FOIA and Privacy Act exemptions. The CIA later supplemented its release of materials on February 16, 2000, at which time it provided Plaintiff with

additional information about 23 of the 28 previously withheld documents.

Notwithstanding the CIA's response to his requests, Plaintiff maintains that the agency has still not fulfilled its obligations under FOIA and the Privacy Act. As a result, Plaintiff now seeks injunctive relief to compel the CIA to disclose the additional information allegedly still in the CIA's possession.

DISCUSSION

I. Legal Standard

A motion for summary judgment shall be granted where all of the evidence demonstrates that "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists "when a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the non-moving party, and facts asserted by the non-moving party, if supported by sufficient evidence, must be taken as true. See, e.g., Aman v. Cort Furniture Rental, 85 F.3d 1074, 1080 (3d Cir. 1996).

However, a non-moving party cannot simply rely on bare assertions, conclusory allegations or suspicions to support its

claim. Fireman's Ins. Co. v. Du Fresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the non-moving party's position will not suffice; there must be some evidence on which a jury could reasonably find for the non-movant. Liberty Lobby, 477 U.S. at 252.

Therefore, it is plain that "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In such a situation, "the moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

II. FOIA and the Privacy Act

The purpose of FOIA is "to facilitate public access to Government documents." United States Dep't of State v. Ray, 502 U.S. 164, 173-74, 112 S. Ct. 541, 116 L. Ed. 2d 526 (1991). With that purpose in mind, FOIA requires governmental agencies to make documents available as long as a request "reasonably describes such records." 5 U.S.C. § 552(a)(3)(A). Although FOIA creates a presumption in favor of disclosure, the Act also contains specific exemptions from that general rule. These statutory exemptions are "'intended to have a meaningful reach and

application' and should not 'be construed in a nonfunctional way.'" Manna v. United States Dep't of Justice, 51 F.3d 1158, 1163 (3d Cir. 1995) (quoting John Doe Agency v. John Doe Corp., 493 U.S. 146, 152, 110 S. Ct. 471, 107 L. Ed. 2d 462 (1989)). At bottom, FOIA seeks to strike a balance between the public's right to know and the Government's need to keep certain information confidential. John Doe Agency, 493 U.S. at 152.

Like FOIA, the Privacy Act reflects Congress's concern about governmental accountability and the public's access to records. However, while FOIA primarily addresses disclosure, the Privacy Act focuses on "allow[ing] individuals on whom information is being compiled and retrieved the opportunity to review the information and request that the agency correct any inaccuracies." Blazy v. Tenet, 194 F.3d 90, 96 (D.C. Cir. 1999) (internal quotations omitted). More specifically, the Privacy Act was intended to provide persons with "more control over the gathering, dissemination, and accuracy of agency information about themselves," whereas "FOIA was intended to increase the public's access to governmental information." Greentree v. United States Customs Serv., 674 F.2d 74, 76 (D.C. Cir. 1982) (emphasis added); see also Porter v. United States Dep't of Justice, 717 F.2d 787, 796-97 (3d Cir. 1983) (discussing interpretation of Privacy Act and Greentree decision).

Plaintiff makes claims under both FOIA and the Privacy Act. Boiled to their essence, Plaintiff's claims challenge whether the CIA performed an adequate search pursuant to those Acts and whether

the statutory exemptions claimed by the CIA are applicable. We examine these two questions in turn.

A. Sufficiency of the Search

The CIA maintains that no material fact exists with respect to whether it performed a sufficient search in response to Plaintiff's requests. We agree.

To demonstrate that no material fact exists about the sufficiency of a search, a government agency must demonstrate that it "conducted a search reasonably calculated to uncover all relevant documents." Steinberg v. United States Dep't of Justice, 23 F.3d 548, 551 (D.C. Cir. 1994) (internal quotations omitted); Brinton v. United States Dep't of Labor, Civ. A. No. 87-7010, 1988 WL 22291, at *1 (E.D. Pa. Mar. 7, 1988). The critical inquiry is not "whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." Steinburg, 23 F.3d at 551; see also Safecard Servs., Inc. v. SEC, 926 F.2d 1197, 1201 (D.C. Cir. 1991); Landes v. Yost, Civ. A. No. 89-6338, 1990 WL 45054, at *3 (E.D. Pa. Apr. 12), aff'd, 922 F.2d 832 (3d Cir. 1990). To show the adequacy of a search, an agency may rely on "reasonably detailed, nonconclusory affidavits submitted in good faith." Steinburg, 23 F.3d at 551; see also Manchester v. Drug Enforcement Admin., 823 F. Supp. 1259, 1264-65 (E.D. Pa. 1993), aff'd, 40 F.3d 1240 (3d Cir. 1994); Manna v. United States Dep't

of Justice, 815 F. Supp. 798, 816-17 (E.D. Pa. 1993), aff'd, 51 F.3d 1158 (3d Cir. 1995).

In support of its Motion, the CIA offers the declaration of William H. McNair, Information Officer of the Directorate of Operations for the CIA ("the McNair declaration"), which sets forth in detail the steps undergone to process Plaintiff's search. According to the McNair declaration, CIA officials searched three different CIA directorates that were deemed to be the most likely to contain records about Plaintiff. The McNair declaration goes on to describe these various directorates, the type of searches performed, and the various steps taken to ensure those searches were reasonably accurate. Plaintiff argues in response that the McNair declaration is merely a "sham" and that an adequate search was never performed. However, Plaintiff offers no concrete evidence in support of his position, relying instead entirely on conclusory statements and non sequiturs.

In view of the detailed contents of the McNair declaration, the great number of documents Plaintiff has already received, and the absence of any other plausible indication that additional documents exist, we find there is no genuine issue of material fact with respect to the adequacy of the CIA's search. Accordingly, we will grant the CIA's Motion with respect to this issue.

B. Applicability of Claimed Exemptions

The CIA argues that the remaining documents that were withheld in their entirety, and those portions of documents that were redacted, fall within exemptions in FOIA and the analogous exemptions in the Privacy Act. Specifically, the CIA asserts that the information in question was properly withheld pursuant to: FOIA exemption (b)(1) and Privacy Act exemption (k)(1) (documents classified pursuant to Executive Order); FOIA exemption (b)(3) and Privacy Act exemption (j)(1) (documents exempted by virtue of collateral statute); and/or FOIA exemption (b)(5) and Privacy Act exemption (d)(5) (inter-agency or intra-agency documents not available by law to a party).

Having reviewed the rather lengthy record in this case, conducted an in camera review of the documents still withheld by the CIA, and examined Plaintiff's claims, we find that the few documents not released to Plaintiff clearly fall within one or more of the above-listed exemptions. Plaintiff's claims to the contrary are simply without merit. Accordingly, we will grant the CIA's Motion with respect to this issue.

CONCLUSION

For the foregoing reasons, we will grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment. An appropriate order follows.